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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 01 2015**

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)

ON BEHALF OF APPLICANT:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who was granted U-3 nonimmigrant status, seeks to adjust his status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, because the applicant failed to demonstrate that the positive factors in his case outweighed his criminal history. Therefore, he did not establish that his presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

Applicable Law

Section 245(m) of the Act states, in pertinent part:

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if --

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The regulation at 8 C.F.R. § 245.24 provides, in pertinent part:

(b) *Eligibility of U Nonimmigrants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 CFR § 214.1(a)(2), and

(ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application

within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status;

(3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section;

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and

(6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

(c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR § 214.14(h).

Facts and Procedural History

On November 13, 2009, the director granted U-3 nonimmigrant status to the applicant based upon an approved Petition for Qualifying Family Member of U-1 Recipient (Form I-918 Supplement A) that his mother filed on his behalf. The applicant filed the instant Form I-485 on November 12, 2013. The director issued a Request for Evidence (RFE), noting that the applicant had a record of arrests, criminal charges, and convictions, and giving the applicant an additional opportunity to demonstrate that he had been rehabilitated and that the positive equities in his case outweighed his criminal history. The director also requested clarification regarding the applicant's 2012 federal tax returns, in which he indicated that he was married although he had stated on his Form I-485 that he was single. The applicant responded to the RFE with letters of support, an amended tax return, and other evidence. The director denied the applicant's adjustment of status application, finding that the applicant had an extensive criminal history from 2006 through 2012 and that records of an interview with the Department of Families and Children¹ indicated that the applicant had previously admitted to membership in the [REDACTED] gang. Therefore, the director found that the negative factors outweighed the positive and that the applicant had failed to show that adjustment of status would be in the public interest.

¹ This interview is documented in a Release Request Worksheet for the Office of Refugee Resettlement, Division of Unaccompanied Children.

Analysis

We conduct appellate review on a *de novo* basis. Upon review of the record, we find no error in the director's decision to deny the adjustment of status application.

Section 245(m) of the Act makes adjustment of status a discretionary benefit. The applicant bears the burden of showing that discretion should be exercised in his favor. 8 C.F.R. § 245.24(d)(11). Although U adjustment applicants are not required to demonstrate their admissibility, U.S. Citizenship and Immigration Services (USCIS) may consider all factors when making its discretionary decision on the application. *Id.* Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, it will be necessary for the applicant to offset these factors by showing sufficient mitigating factors. *Id.* This rule permits applicants to submit information regarding any mitigating factors they would like USCIS to consider when determining whether a favorable exercise of discretion is appropriate. *Id.* Depending on the nature of the adverse factors, the applicant may be required to demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. *Id.* Moreover, depending on the gravity of the alien's adverse factors, such a showing might still be insufficient. *Id.*; *Matter of Jean*, 23 I&N Dec. 373, 383-384 (A.G. 2002), *aff'd*, *Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006); *see also Pinentel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008); *Mejia v. Gonzales*, 499 F.3d 991 (9th Cir. 2007). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. 8 C.F.R. § 245.24(d)(11).

In *Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (BIA) stated, “[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” *Devison-Charles* at 1365; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). The BIA added, “[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime.” *Devison-Charles* at 1365. The FJDA defines a “juvenile” as “a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,” and “juvenile delinquency” as “the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.” *Ramirez-Rivero* at 137 (citing 18 U.S.C. § 5031).

Although an act of juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal, a juvenile offense can be considered in reviewing an application for a discretionary benefit, such as adjustment of status. *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); *see* 8 C.F.R. § 245.24(d)(11).

The record demonstrates that the applicant's history of arrests and convictions is as follows:

- On [REDACTED] 2006, he was arrested for possession of cannabis.
- On [REDACTED] 2006, he was arrested for reckless conduct.
- On [REDACTED] 2006, he was arrested for reckless conduct.
- On [REDACTED] 2006, he was arrested for reckless conduct.
- On [REDACTED] 2006, he was arrested for battery/bodily harm.
- On [REDACTED] 2007, a warrant was issued for his arrest.
- On [REDACTED] 2008, he was arrested for criminal damage to property and mob action. The charges were stricken from the docket with leave to reinstate.
- On [REDACTED] 2008, he was charged with disorderly conduct - breach of peace. The charge was stricken from the docket with leave to reinstate.
- On [REDACTED] 2008, he was charged with soliciting unlawful business. The case was non-suited.²
- On [REDACTED] 2009, he was arrested for battery/bodily harm. The charge was stricken from the docket with leave to reinstate.
- On [REDACTED] 2009, he was arrested for obstruction of traffic by non-motorist. The case was non-suited.
- On [REDACTED] 2009, he was arrested for obstruction of traffic by non-motorist. The case was non-suited.
- On [REDACTED] 2009, he was arrested for obstruction of traffic by non-motorist. The case was non-suited.
- On [REDACTED] 2010, he was arrested for obstruction of traffic by non-motorist. The case was non-suited.
- On [REDACTED] 2010, he was arrested for driving with a suspended or revoked license.
- On [REDACTED] 2010, he was arrested for reckless conduct in violation of 720 ILCS 5/12-5(a). He pled guilty and was sentenced to one year of court supervision.
- On [REDACTED] 2010, he was arrested for criminal trespass to state land and violation of the liquor control act (drinking while under 21). The charges were stricken from the docket with leave to reinstate.
- On [REDACTED] 2010, he was arrested for consumption of alcohol by any person under 21 years of age, a misdemeanor, in violation of 235 ILCS 5/6-20(e). He pled guilty and was sentenced to court supervision and community service. On May 1, 2012, his sentence was terminated.
- On [REDACTED] 2011, he was arrested for domestic battery. The charge was stricken from the docket with leave to reinstate.

² "A 'nonsuit' is a judgment against a plaintiff when he or she is unable to prove the case or where such party refuses or neglects to proceed to the trial of a case after it has been put in issue without determination. The terms 'nonsuit' and 'voluntary dismissal without prejudice' are used interchangeably because there is no difference in effect between them." 16 Ill. Law and Prac. Dismissal and Nonsuit § 1 (2015).

- On [REDACTED] 2012, a warrant was issued for his arrest due to his failure to comply with the terms of a prior arrest. The disposition of this warrant is not clear from the record.

The above-listed arrests and charges that occurred prior to 2009 took place while the applicant was a juvenile. He reached the age of 18 on [REDACTED]

In his appeal brief, the applicant contends that the director erred in considering his arrests in the determination of whether he merits adjustment of status as a matter of discretion. The applicant cites *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), and *Avila-Ramirez v. Holder*, 764 F.3d 717 (7th Cir. 2014), to support his assertion that USCIS cannot deny discretionary relief based on uncorroborated arrest records with no evidence of the applicant's guilt. He also claims that the director erred in basing her decision partly on an allegation that the applicant had previously admitted to being a gang member. The applicant asserts that the director should have notified him of this derogatory information and provided an opportunity to respond. Furthermore, the applicant claims that the positive factors in his case outweigh the negative. He states that his U.S. citizen children and girlfriend depend on him and would suffer extreme hardship in his absence, and that he provides important support to his mother. Additionally, he states that he has a long history of residence in the United States since he was a young child, has stable employment, has filed income taxes, completed his GED, hopes to attend college, is a member of a church, and has "taken affirmative steps to avoid previous acquaintances and situations."

The applicant has filed an updated affidavit on appeal, in which he states that he has lived in the United States since he was three years old. He indicates that his childhood was difficult because his father was cruel and abusive to him, his siblings, and his mother. He states that he spent time away from home as a child in order to avoid his father, and made friends with people who were bad influences. He also states that his father sent him and his brother back to Mexico in 2006 as a punishment, and that this was traumatic for him because they lacked proper care there. He explains the circumstances of each of his arrests, alleging that some were based on misunderstandings or did not lead to criminal charges. The applicant also states that although he knows gang members, he is not a member of a gang and was not a member in the past. He states that he regrets his past actions and has worked to change his behavior. He explains that he is now the father of three young children and works hard to support and be a good parent to them. The applicant makes regular child support payments to the mother of his first child and also provides financial, physical, and emotional support to his current girlfriend, who is the mother of his two younger children. Additionally, the applicant explains that he, his girlfriend, and their children live in the basement apartment of the applicant's mother's house, and that he assists his mother with household responsibilities. He further notes that his sister was killed in a car accident in 2006 and that his entire family, particularly his mother, continues to struggle emotionally with this loss.

On appeal, the applicant submits a psychological evaluation which states that the applicant grew up in an abusive environment and that "it is reasonable to describe his encounters with the law as a symptom of the trauma he experienced in his life." The evaluation indicates that the applicant now cares for his family and appears likely to engage in positive behaviors in the future.

The applicant also submits on appeal numerous letters from family and friends. His girlfriend, [REDACTED] states that the applicant supports her and their two children financially and emotionally. She claims that he is a good father and that she would struggle to care for their children without his assistance. [REDACTED] also feels that it would be difficult for her and the children to live in Mexico with the applicant because they would lack job opportunities and family support and would feel unsafe there. She notes that although the applicant got in trouble when he was younger, he acknowledges his mistakes and has worked to change his behavior. [REDACTED] mother, [REDACTED] Villa, confirms in a letter that the applicant supports his family, is a good father, and treats Ms. [REDACTED] well. [REDACTED] sister, [REDACTED] also states that the applicant is a good person and father and that his family relies on him. [REDACTED] believes that the applicant deserves a second chance.

The applicant's mother, [REDACTED] states on appeal that her ex-husband was very abusive to her, the applicant, and her other children. She asserts that the applicant and his siblings were negatively affected by the abuse in their home. [REDACTED] notes that she worked long hours to support her family in the absence of financial support from her abusive ex-husband, so she was unable to provide necessary supervision to the applicant and her other children. She states that the applicant now supports her and that she would suffer emotionally if the applicant were required to return to Mexico. The applicant's sister, [REDACTED] confirms in a letter filed on appeal that the applicant became "involved with the wrong crowd" because he spent most of his time outside the home in an effort to avoid their father's abuse, but that he has since made positive changes in his life. [REDACTED] notes that the applicant spends his time with his family, helps with the household responsibilities, and takes his role as a father seriously. Another sister, [REDACTED] also states that the applicant provides essential support to his family. [REDACTED] notes that the applicant is continuously improving himself. Two of the applicant's brothers-in-law, [REDACTED] note that the applicant made mistakes in the past but that he has overcome a difficult and abusive childhood to become a good father and the sole financial provider for his children.

Also submitted on appeal are numerous additional letters of support, including from the reverend at the applicant's church, former coworkers and supervisors, friends of his family, neighbors, and personal friends. All state that the applicant is focused on providing for his children and his girlfriend and being a supportive member of his extended family.

The record also indicates that the applicant has completed a work readiness program and a GED, has taken college placement tests, pays child support for his eldest son, and is employed. Additionally, the record contains letters from the applicant's supervisors in youth mentoring and work readiness programs, both of whom state that the applicant demonstrated motivation, leadership skills, maturity, and commitment to his goals. [REDACTED] State Representative for the [REDACTED] District of Illinois, states in a letter that the applicant is an asset to his community, is a person of good moral character, has overcome the abusive environment in which he grew up, and is a good father.

The applicant asserts on appeal that discretionary relief cannot be denied based on uncorroborated arrest records where there is no evidence of conviction or guilt. However, the cases he cites in

support of this assertion do indicate that arrest reports can be considered negative discretionary factors. In *Matter of Arreguin*, the BIA stated that it was “hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.” 21 I&N Dec. 38, 42 (BIA 1995). As a result, the BIA did consider the arrest report but gave it “little weight.” *Id.* In *Avila-Ramirez v. Holder*, the Seventh Circuit Court of Appeals found that the BIA erred in giving an arrest report “significant weight” but clarified, “this is not to say that we read *Arreguin* to prohibit any consideration of arrest reports in the weighing of discretionary factors.” 764 F.3d 717, 725 (7th Cir. 2014) (citing *Arreguin*, 21 I&N Dec. at 42, and *Sorcía v. Holder*, 643 F.3d 117, 126 (4th Cir. 2011) (stating that *Arreguin* “did not indicate that it was *per se* improper to consider an arrest report . . .”). Therefore, although we do not give substantial weight to arrest reports that did not lead to conviction, we do consider them in our discretionary determination.

The favorable factors in this case include: the applicant’s residence in the United States for the majority of his childhood; his close family ties in the United States with his mother, siblings, and three young U.S. citizen children; the fact that he provides regular child support payments to his eldest son and is the sole financial provider for his two younger children and their mother; the support he provides to his mother and other family members; and his efforts to improve his behavior by avoiding people and situations that used to lead to trouble for him, obtaining his GED, completing a work readiness program, and obtaining employment. Additionally, the mental health evaluation in the record indicates that the applicant lacked proper support and supervision as a child due to his father’s abusive behavior, and that his negative behaviors are related to the trauma he suffered. We have considered these favorable factors, but we find that the negative factors in the applicant’s case outweigh them.

Negative factors in this case include the applicant’s 18 arrests between 2006 and 2012. Although nine of the applicant’s contacts with law enforcement occurred while the applicant was a juvenile and seven others were nonsuited (dismissed) or stricken from the docket, the evidence as a whole demonstrates a pattern of criminal activity on the part of the applicant and does not show rehabilitation. In addition to the applicant’s arrests, two warrants have been issued for his arrest, including one from [REDACTED] 2012, the disposition of which is not clear from the record.

Additionally, in his statement submitted on appeal, the applicant offers explanations that conflict with other evidence in the record or place blame on others, therefore failing to take responsibility for his criminal history. With regard to his arrest on [REDACTED] 2006 for battery/bodily harm, he states that a classmate accused the applicant of hitting him but that, although he “had seen this guy around, [he] had not tried to hurt him.” However, this account conflicts with an interview report from the Office of Refugee Resettlement, Division of Unaccompanied Children (ORR report), dated [REDACTED] 2007, which notes that the applicant “stated that he had fought with another student in school, resulting in the other student having a swollen eye.” Furthermore, the applicant addresses the fact that he was arrested for reckless conduct, but discusses only one of his four arrests on that basis, stating that he does not know why he was arrested. In explanations of his arrests for criminal damage to property/mob action, soliciting unlawful business, and domestic battery, he blames others for the circumstances that led to his arrest. This does not demonstrate that the applicant has been rehabilitated through taking responsibility for 18 arrests in six years.

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The applicant's two convictions are also negative factors. The first conviction was for reckless conduct in violation of 720 ILCS 5/12-5(a)(1), which involves causing bodily harm or endangering the safety of another. His second conviction was in violation of 235 ILCS 5/6-20(e), which states, "The consumption of alcoholic liquor by any person under 21 years of age is forbidden." In his statement on appeal, the applicant indicates that this conviction resulted when the police found beer in his car during a traffic stop.

An additional negative factor is a statement in the ORR report, which indicates that during an interview to prepare for his release from a juvenile facility, the applicant

did admit to having been a member of the [redacted] [sic] gang and having spent time gang banging. He has stated verbally and in writing that his trip to Mexico has taught him to value his freedom and family more and he would not want to return to the gang banging if he was allowed to return home.

On appeal, the applicant states that he does not recall making this statement, asserts that he has never been a gang member, and contends that he did not have an opportunity to respond to this allegation prior to the director's decision. His family and friends also state in their letters of support that they are not aware of the applicant having been involved in any gang activity. We have considered the evidence on this issue *de novo* and the applicant has responded to this allegation on appeal. However, aside from the assertions of the applicant and his family and friends on this matter, there is no evidence in the record that the ORR report was inaccurate. The applicant has offered no explanation as to why the ORR case worker would report that the applicant had admitted to gang activity and had declared, both verbally and in writing, that he did not intend to participate in such activity in the future, if he did not actually make such statements and was not a gang member. The assertions of the applicant and his family and friends on appeal, without additional supporting evidence, are insufficient to outweigh the ORR report of the applicant's gang activity.

When viewed in their totality, the adverse factors in this case outweigh the positive factors. The applicant has not demonstrated his rehabilitation or that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is in the public interest. Accordingly, he has not demonstrated eligibility for adjustment of status and we will dismiss his appeal.

Conclusion

In these proceedings, the applicant bears the burden of proving his eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.